TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900 1902.

No. 625. 1900. 79.

THE HARTFORD FIRE INSURANCE COMPANY, PETITIONER,

vs.

ALBERT A. WILSON AND JOHN B. LARNER, TRUSTEES.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

PETITION FOR CERTIORARI FILED APRIL 8, 1901.
CERTIORARI AND RETURN FILED APRIL 23, 1901.

(18,110.)

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1 In the Court of Appeals of the District of Columbia.

ALBERT A. WILSON ET AL., Trustees, Appellants,
vs.
THE HARTFORD FIRE INSURANCE CO. } No. 959.

Supreme Court of the District of Columbia.

ALBERT A. WILSON ET AL.
vs.
THE HARTFORD FIRE INSURANCE COMPANY. } No. 38932. At Law.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Declaration & Notice to Plead.

Filed Nov. 12, 1895.

In the Supreme Court of the District of Columbia.

ALBERT A. WILSON and JOHN B. LARNER, Trustees, Plaintiffs,
vs.
THE HARTFORD FIRE INSURANCE COMPANY of the City of Hartford, Connecticut, a Corporation Duly Incorporated under the Laws of the State of Connecticut, Defendants. } At Law. No. 38932.

1. The plaintiffs, as trustees, sue the defendant, a corporation duly incorporated under the laws of the State of Connecticut, but doing business and having an office in the District of Columbia, for that whereas heretofore, to wit, on the 17th day of April, A. D. 1895, the said defendant did execute and deliver to the said plaintiffs its certain paper-writing, commonly called a policy of insurance, dated the 17th day of April, 1895, whereby and wherein it did, in consideration of the stipulations contained, and further the sum of seventeen and $\frac{50}{100}$ dollars ($17.50), then and there paid to the said defendant by the Ivy City Brick Company, insure the said Ivy City Brick Company for the term of one (1) year, from the 17th day of April, A. D. 1895, at noon, to the 17th day of April, A. D.
2 1896, at noon, against all direct loss or damage by fire to an amount not exceeding one thousand dollars ($1,000.00) to the following property, all being the property of the said Ivy City Brick Company, namely: On their one-story brick and frame struc-

ture, metal roof (about 118 x 165 feet), and one-story brick and frame addition, with metal roof, including dryers, situated on their tract known as Ivy City, about one mile northeast of Washington, D. C., loss, if any, payable, as interest might appear, to Albert A. Wilson and John B. Larner, trustees, the plaintiffs herein; that by the terms of the said policy the said defendant should not be liable beyond the actual cash value of the property at the time any loss or damage occurred, and any loss or damage should be ascertained or estimated according to such actual cash value, with proper deduction for depreciation, however caused, and should in no event exceed what it would then cost the insured to replace or repair the same with material of like kind and quality, said ascertainment or estimate to be made by the insured and the said company, or, if they differ, then by appraisers, as provided in said policy, and the amount of loss or damage having been so determined, the sum for which the said company should be liable, pursuant to the said policy, shall and should be payable sixty (60) days after due notice, ascertainment, estimate, and satisfactory proofs of any loss should have been received by the said company in accordance with the terms of the said policy. It shall be optional, however, with the said company to take all or any part of the articles at such ascertained or appraised value, and also to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time on giving notice within thirty (30) days after the receipt of the proof required in said policy of its intention so to do, but that there should be no abandonment to said company of the property described; that the plaintiffs herein are trustees under a deed of trust from the said Ivy City Brick Company, by which said deed of trust the said Ivy City Brick Company conveyed the property set out in said policy of insurance to the said plaintiffs in trust for the purpose of securing the payment of certain promissory notes of the said Ivy City Brick Company and the interest thereon, amounting to a large sum of money, to wit, ninety thousand dollars ($90,000.00), which notes are still outstanding and unpaid; that thereafter, to wit, on the 17th day of May, A. D. 1895, while the said policy was in full force and effect, the said property described in said policy was totally destroyed by fire, whereby said property sustained an immediate loss and damage largely exceeding in amount the said sum of one thousand dollars ($1,000.00) and, further, largely exceeding in amount the sum of all and every the insurance upon said property; that the said Ivy City Brick Company did thereafter, to wit, on the same day of said fire, the said 17th day of May, A. D. 1895, give notice of said loss in writing to the said company, and did, according to the condition contained in said policy, thereafter, to wit, on the 7th day of August, A. D. 1895, render a statement to the said company, signed and sworn to by the president of the Ivy City Brick Company, stating the time and
3 origin of the fire to his best knowledge and belief, and the interest of the insured and all others in the said property, and the cash value of each item thereof, and the amount of loss thereon; all encumbrances thereon; all other insurances, whether

valid or not, covering all of said property, and a copy of all the descriptions and schedules of all policies; and the said Ivy City Brick Company did in every respect keep, fulfill, and perform each and every the conditions and covenants in the said policy of insurance to be by it kept and performed; that immediately upon receipt of said notice it became the duty of the said defendant, within 60 days after the receipt of said notice, which said notice was duly thereafter received, to wit, on the 8th day of August, A. D. 1895, either to pay to the said plaintiffs the amount stated in said policy or to replace the said property, as is hereinbefore set out; that if the said company should have desired to avail itself of the option of replacing and repairing the said property it was required and compelled to have given notice of its intention so to do within thirty (30) days after the receipt of the proof hereinbefore set out, but the said defendant did not give the said plaintiffs or the Ivy City Brick Company notice of its desire or intention to replace and repair the said property within thirty (30) days after the receipt of said proof, nor has it ever notified the plaintiffs or the said Ivy City Brick Company of its intention so to do, but, on the contrary, the said defendant has since shortly after the day of said fire, to wit, on the 17th day of May, A. D. 1895, denied any responsibility upon the said policy of insurance or of its intention to pay any loss or damage on account of the same, whereby and by reason of the premises the said defendant became and is liable to pay to the said plaintiffs the sum of one thousand dollars ($1,000.00), as it in and by the said policy of insurance did promise to do; but, on the contrary, although often requested so to do, has not paid the said sum or any part thereof, either to the plaintiffs or the Ivy City Brick Company, to the damage of the said plaintiffs in the sum of fifteen hundred dollars ($1,500.00).

And the plaintiffs claim the sum of one thousand dollars ($1,000.00), with interest, at the rate of six per centum per annum, from the 7th day of October, A. D. 1895, until paid, besides costs of suit.

2. The plaintiffs, as trustees, further sue the defendant, a corporation duly incorporated under the laws of the State of Connecticut, but doing business and having an office in the District of Columbia, for that whereas, heretofore, to wit, on the 17th day of April, A. D. 1895, the said defendant did execute and deliver to the said plaintiffs its certain other paper-writing, commonly called a policy of insurance, dated the 17th day of April, 1895, whereby and wherein it did, in consideration of the stipulations contained and, further, the sum of seventeen and $\frac{50}{100}$ dollars ($17.50), then and there paid to the said defendant by the Ivy City Brick Company, insure the said Ivy City Brick Company for the term of one (1) year, from the 17th day of April, A. D. 1895, at noon, to the 17th day of April, A. D. 1896, at noon, against all direct loss or damage by fire to an amount

4 not exceeding one thousand dollars ($1,000.00) to the following property, all being the property of the said Ivy City Brick Company, namely, machinery of every description, dryers, cars, apparatus, and equipments and tools contained in their one-

story brick and frame structure, with metal roof (about 118 by 165 feet), and a one-story frame and brick addition, with metal roof, situate on their tract, known as Ivy City, about one mile northeast of Washington, D. C., loss, if any, payable, as interest might appear, to Albert A. Wilson and John B. Larner, trustees, the plaintiffs, herein; that by the terms of the said policy the said defendant should not be liable beyond the actual cash value of the property at the time any loss or damage occurred, and any loss or damage should be ascertained or estimated according to such actual cash value, with proper deduction for depreciation, however caused, and should in no event exceed what it would then cost the insured to replace or repair the same with material of like kind and quality, said ascertainment or estimate to be made by the insured and the said company, or, if they differ, then by appraisers, as provided in said policy; and the amount of loss or damage having been so determined, the sum for which the said company should be liable pursuant to the said policy shall and should be payable sixty (60) days after due notice, ascertainment, estimate, and satisfactory proofs of any loss should have been received by the said company in accordance with the terms of the said policy. It shall be optional, however, with the said company to take all or any part of the articles at such ascertained or appraised value, and also to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time on giving notice within thirty (30) days after the receipt of the proof required in said policy of its intention so to do, but that there should be no abandonment to said company of the property described; that the plaintiffs herein are trustees under a deed of trust from the said Ivy City Brick Company, by which said deed of trust the said Ivy City Brick Company conveyed the property set out in said policy of insurance to the said plaintiffs in trust for the purpose of securing the payment of certain promissory notes of the said Ivy City Brick Company and the interest thereon, amounting to a large sum of money, to wit, ninety thousand dollars ($90,000.00), which notes are still outstanding and unpaid; that thereafter, to wit, on the 17th day of May, A. D. 1895, while the said policy was in full force and effect, the said property described in said policy was totally destroyed by fire, whereby said property sustained an immediate loss and damage largely exceeding in amount the said sum of one thousand dollars ($1,000.00) and, further, largely exceeding in amount the sum of all and every the insurance upon said property; that the said Ivy City Brick Company did thereafter, to wit, on the same day of said fire, the said 17th day of May, A. D. 1895, give notice of said loss, in writing, to the said company, and did, according to the condition contained in said policy, thereafter, to wit, on the 7th day of August, A. D. 1895, render a statement to the said company, signed and sworn to by the president of the Ivy City Brick Company,
5 stating the time and origin of the fire to his best knowledge and belief, and the interest of the insured and all others in the said property, and the cash value of each item thereof and the amount of loss thereon, all encumbrances thereon, all other in-

surances, whether valid or not, covering all of said property, and a copy of all the descriptions and schedules of all the policies, and the said Ivy City Brick Company did in every respect keep, fulfill, and perform each and every the conditions and covenants in the said policy of insurance to be by it kept and performed; that immediately upon the receipt of said notice it became the duty of the said defendant within sixty (60) days after the receipt of said notice, which said notice was duly thereafter received, to wit, on the 8th day of August, A. D. 1895, either to pay to the said plaintiffs the amount stated in said policy or to replace the said property, as is hereinbefore set out; that if the said company should have desired to avail itself of option of replacing and repairing the said property, it was required and compelled to have given notice of its intention so to do within thirty (30) days after the receipt of the proof hereinbefore set out; but the said defendant did not give the said plaintiffs or the Ivy City Brick Company notice of its desire or intention to replace and repair the said property within thirty (30) days after the receipt of said proof, nor has it ever notified the plaintiffs or the said Ivy City Brick Company of its intention so to do, but, on the contrary, the said defendant has since shortly after the day of said fire, to wit, on the 17th day of May, A. D. 1895, denied any responsibility upon the said policy of insurance or of its intention to pay any loss or damage on account of the same, whereby and by reason of the premises the said defendant became and is liable to pay to the said plaintiffs the sum of one thousand dollars ($1,000.00), as it in and by the said policy of insurance did promise to do; but, on the contrary, although often requested so to do, has not paid the said sum or any part thereof either to the plaintiffs or the Ivy City Brick Company, to the damage of the said plaintiffs in the sum of fifteen hundred dollars ($1,500.00).

And the plaintiffs claim the sum of one thousand dollars ($1,000.00), with interest, at the rate of six per centum per annum, from the 7th day of October, A. D. 1895, until paid, besides costs of this suit.

And the plaintiffs claim the sum of two thousand dollars ($2,000.00), with interest, at the rate of six per centum per annum, from the 7th day of October, A. D. 1895, until paid, besides costs of this suit.

HENRY WISE GARNETT,
Att'y for Pl'fts.

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the date of the service hereof; otherwise judgment.

HENRY WISE GARNETT,
Attorney for Plaintiff.

6

Plea.

Filed Dec. 3, 1895.

In the Supreme Court of the District of Columbia.

ALBERT A. WILSON and JOHN B. LARNER, Trustees, Plaintiffs,
vs.
THE HARTFORD FIRE INSURANCE COMPANY OF THE City of Hartford, Connecticut, a Corporation, Duly Incorporated under the Laws of the State of Connecticut, Defendant.
} At Law. No. 38932.

And now comes the defendant, and for plea to the first count of plaintiffs' declaration says:
That it did not undertake and promise as is therein alleged.
And for plea to the second count of said declaration says:
That it did not undertake and promise as is therein alleged.
And for plea to the said declaration says:
That it did not undertake and promise as is alleged therein.

JOSEPH J. McNALLY,
J. WALTER WHEATLEY,
Attorneys for Defendant.

Joinder of Issue.

Filed Dec. 12, 1895.

In the Supreme Court of the District of Columbia.

ALBERT A. WILSON ET AL., Plaintiffs,
vs.
THE HARTFORD FIRE INSURANCE COMPANY, etc., Defendant.
} At Law. No. 38932.

The plaintiffs join issue on the defendant's pleas.

HENRY WISE GARNETT,
Attorney for Plaintiffs.

Agreed Case.

Filed Jun-15, 1898.

In the Supreme Court of the District of Columbia.

ALBERT A. WILSON ET AL., Plaintiffs,
vs.
THE HARTFORD FIRE INSURANCE COMPANY of the City of Hartford, Connecticut, Defendant.
} At Law. No. 38932.

1. Prior to April 17th, 1895, C. C. Duncanson, treasurer of the Ivy City Brick Company of the City of Washington, D. C.,

authorized the firm of Tyler & Rutherford, of said city, at their request, to place insurance for the company, loss, if any, ıyable to Albert A. Wilson *et al.*, trustees under a deed of trust ven by said company, as interest might appear, said Duncanson :erring the amount to be placed to be the sum of ten thousand ollars ($10,000), and Tyler & Rutherford averring a much larger ım.

On said April 17th, 1895, said Tyler & Rutherford, under the foresaid authority, proposed to one Barrett, an agent, at said city f Washington, of the Hartford Fire Insurance Company of Hartord, Connecticut, for insurance on properties of the said Ivy City Brick Company.

2. Said Barrett stated to said Tyler & Rutherford that the proosed risk was a special hazard, and that he doubted his authority o accept it before reference to his principal, but that he would issue olicies amounting to $2,000, equally divided on the buildings and machinery, upon the condition that the same should be held by the aid Tyler & Rutherford, and not delivered to their principals until he decision of the Hartford Fire Insurance Company on the acceptnce of the risk was duly had, and should be subject to immediate ancellation (the 5-days' notice in the policy conditions being waived) by notice that said company rejected the risk.

3. This condition was accepted by said Tyler & Rutherford, and the two policies of insurance in the declaration set forth were thereupon written and placed in their hands.

4. A short time thereafter, to wit, on the 27th day of April ensuing, on the first inspection visit to Washington after the issue of said policies, William R. Royce, the special agent of the Hartford Fire Insurance Company, known by said Tyler & Rutherford to be the representative of the company, having authority to inspect, confirm, or cancel risks for and in behalf of said company, went to the office of said Tyler & Rutherford and informed them that the Hartford Fire Insurance Company refused to carry the risk and ordered the cancellation of the said policies, and on the same day the said Barrett, being on his way to the office of Tyler & Rutherford, met R. K. Tyler, a member of that firm, who had made the negotiation for the policies, had the same in his custody, and had exclusive charge of the matter, and announced to him that the company ordered their cancellation; to which the said Tyler responded, "All right; send up and get them."

5. The said Barrett sent three times to the office of Tyler & Rutherford for the policies. Each time his employee was informed by one of the clerks of Tyler & Rutherford that Mr. R. K. Tyler, who had charge of the policies, was absent from the office, and they would have to see him.

6. Said Barrett was taken sick and did not appear at his office for some days, but had immediately ordered the entry clerk to make the customary entry in such cases on the register where the policies were noted, "Cancelled by order of company," which was accordingly done.

7. On the first day of May ensuing the customary mutual
8 accounts of business between the offices of said Barrett and said Tyler & Rutherford were settled, and the two policies were treated as dead, no charge for their premiums being presented on the one hand or asked for on the other.

(MEM.—Of the facts recited in the second clause of paragraph 1 and in paragraphs 2, 3, 4, 5, 6, and 7 above set forth, no party connected with or interested by mortgage or otherwise in the Ivy City Brick Company had any knowledge until after the fire occurred.)

8. The existence of the two policies was never reported to the said Duncanson nor to any one connected with said Ivy City Brick Company by mortgage or otherwise, nor did he or they have any knowledge of or connection with said policies until they came into the hands of said Duncanson on May 16th, 1895, and at no time prior to the fire had any party connected with or interested, by mortgage or otherwise, in the Ivy City Brick Company any knowledge of the transaction between said Barrett and said Tyler & Rutherford hereinbefore set forth.

9. The two policies had been overlooked by Tyler & Rutherford and lay in the drawer along with a number of other policies issued by other insurance companies which had been secured by said Tyler & Rutherford for the purpose of filling the above order. Of this fact no one connected with the Ivy City Brick Company in any interest whatever was informed until after the fire.

10. Tyler & Rutherford had found great difficulty in procuring the desired insurance, and aver that the entire amount proposed was never secured. Some of the agencies insisted on the same conditions as to cancellations as those fixed between said Barrett and said Tyler & Rutherford, and cancellations by orders of the different companies were so frequent that said Tyler & Rutherford could not at any time before May 16th know how much of binding insurance was in hand. Of all these facts the said R. K. Tyler avers that he informed the said Duncanson in the progress of the effort to secure insurance and some time prior to the fire. The said Duncanson denies that he had information as to any of these facts at any time prior to the fire, except the fact that there was difficulty in procuring the desired insurance. No specific mention, however, of the two policies of the defendant was made to said Duncanson, or any one connected in any interest with the Ivy City Brick Company.

11. On the 16th of May, 1895, a clerk of Tyler & Rutherford was directed to make up the account of the policies on hand and put them in a package for delivery. The two policies of the Hartford Fire Insurance Company, which had been overlooked and were then lying in the same drawer with the other policies, taken in fulfillment of this order, were included in the account and placed in the package with said other policies by said clerk of Tyler & Rutherford without the personal knowledge of said Tyler & Rutherford, and both were handed to said Duncanson by said R. K. Tyler, said Tyler not examining the same. Said Duncanson took the package and

gaged to pay the account on the Monday week following, to wit, May 27, 1895.

12. On the morning of May 17th, after the fire which occurred about one o'clock a. m., on that day, said R. K. Tyler came said Duncanson and asked for the return of the two policies, ting that they had been handed him by mistake and the fact of ir previous cancellation, said Tyler averring that he did not ow that the property described as insured had been destroyed. ter, on that day, when the fact was known that the property de- ibed in the policies was destroyed, Tyler & Rutherford, by tele- one, informed the Washington Loan & Trust Company, the bene- iary of the trust held by Wilson *et al.*, trustees, that the Hartford licies had been delivered by mistake and requested it to send ck the two policies, and were answered that they were locked up, t would be returned the next morning.

Of this request and answer by the telephone it is agreed that the y City Brick Company knew nothing at the time, and when in- rmed of said request directed that the policies be not returned. ie policies were not returned, and sundry correspondence followed tween said Tyler & Rutherford, said Duncanson, and the Wash- gton Loan & Trust Company, in the course of which said Dun- nson sent a check to Tyler & Rutherford for the settlement of e account above referred to. Tyler & Rutherford refused said ttlement, stating that the two policies of the Hartford were void d had been sent in by mistake, and returned the check, with a rrected account, excluding these policies. The correspondence tween said Duncanson, said Tyler & Rutherford, and said Wash- gton Loan & Trust Company and the policies sued on may be ed with this statement and considered as part of this agreed case.

13. Defendant waives any claim of laches or irregularity as to otice of loss, or as to the particular account commonly called proof loss.

14. The parties hereto reserve the right to except to the rulings the court on the aforegoing agreed case. The court shall be con- dered as having directed the jury to find a verdict in favor of the rty for whom the court itself shall find in accordance with the ipulation following, and either party hereto shall be considered as aving filed an objection to such ruling or rulings of the court and aving duly taken exception thereto, and said party so excepting hall be allowed an appeal thereon to the Court of Appeals, and this greed case shall be filed in the said court as the proper bill of xceptions herein.

On the above state of facts it is agreed that should the court find r the plaintiff judgment shall enter for $2,000, with interest from ctober 7th, 1895, and costs.

And should the court find for the defendant, judgment shall enter r the defendant with costs.

BLAIR & THOM,
Attorneys for Plaintiff.
WOLF & ROSENBERG,
Attorneys for Defendant.

10 (Endorsed:) Let the term be extended to settle the bill of exceptions in this case. Dec. 30, '99. A. C. Bradley, J.

Correspondence Referred to in Agreed Case.

Filed Dec. 9, 1899.

MAY 14'' 5

IVY CITY BRICK CO.

No. policy.	Date.	Company.	Insured.	Am't.	Premium.
300048	Apr. 17, '95	Hanover Ins. Co. of N. Y.	Ivy City Brick Co., on buildings.	1,000	1,750
20230	" " "	Underwriters, Hartford.	Do. do.	1,000	1,750
2408	" 18, "	Orient of Hartford...	Do. do.	1,000	1,750
2273	" " "	Pacific of N. Y.	Do. do.	750	1,313
251636	" " "	Reading of Pa.....	Do. do.	750	1,313
300047	" 17, "	Hanover of N. Y. ..	Machinery. ..	1,000	1,750
20229	" " "	Underwriters of Hartford.	Do.	1,000	1,750
2407	" 18, "	Orient of Hartford...	Do.	1,000	1,750
716975	" 19, "	American Central of St. Louis.	Do.	1,000	1,750
251635	" 18, "	Reading of Pa.	Do.	750	1,313
2272	" " "	Pacific of N. Y.	Do.	750	1,313
					$17,502

Above policies herewith to C. C. Duncanson by messenger.

This paper, it is agreed, was delivered May 16, 1895, and is the list of policies referred to in paragraph 11 of the agreed case.

Tyler & Rutherford, real estate, loans, and insurance, office 1307 F street northwest.

WASHINGTON, D. C., *May* 17, 1895.

Ivy City Brick Co., addressed.

GENTLEMEN: Please return us policies Nos. 20229 and 20230 of the Underwriters' Ins. Co. of Conn. These policies were ordered cancelled shortly after they were issued, and were delivered to you by mistake of one of our employés. We send you herewith the letter of the agent of the Underwriters' New York agency, which explains itself. Please return the enclosed letter with the policies by bearer and oblige,

Yours truly, TYLER & RUTHERFORD.

1 enclosure.

Thos. F. Barrett & Co., real estate and insurance brokers, 519 12th street northwest, Washington, D. C., gen'l ag'ts, District of Columbia, for Standard Life and Accident Ins. Co. of Detroit, Mich.

...een of America, of N. Y.; Hanover, of N. Y.; New York Underwriters, of N. Y.; Firemen's, of Newark, N. J.

MAY 17TH, 1895.

...ssrs. Tyler & Rutherford, agents, city.

GENTLEMEN: I desire to call your attention again to the fact that ...licies # 20229, 20230, of the Underwriters' agency of New York ...ve not yet been returned to this office. The policies are dated ...ril 17th, 1895; that within a few days after they were written we ...ceived a request from the company for their immediate cancella... and return. This was followed by a personal visit of the spe... agent, Mr. Royce, to your office, who again requested their re... Since that time we have made repeated requests for the ...urn of the policies. We hope you will return them to us at once ...d oblige,

Yours truly, THOS. F. BARRETT & CO.

WASHINGTON, D. C., *May 18th*, 1895.

...ssrs. Tyler & Rutherford, agents, city.

GENTLEMEN: You are hereby notified that a fire took place at the ...y City Brick Company plant yesterday morning, and considerable ...ss was occasioned by same. Being desirous to remove the debris ... soon as possible, for the purpose of making arrangements to re...ild, we desire you to notify the companies immediately who have ...surance on said plant.

Please inform us whether we can go ahead.

Yours respectfully, IVY CITY BRICK CO.,
By C. C. DUNCANSON, *Treasurer*.

MAY 18, 1895.

...C. Duncanson, Esq., treasurer Ivy City Brick Co., addressed.

DEAR SIR: We have your favor of this date and, as requested, will ...tify the companies interested in the loss upon the plant of the Ivy ...ty Brick Company, recently damaged by fire. Pending the arrival ... adjusters for the insurance companies, it is the duty of the assured ... take such measures for the protection of the property from further ...mage as they would if it were not insured.

Yours truly, TYLER & RUTHERFORD.

MAY 20, 1895.

...C. Duncanson, Esq., treasurer Ivy City Brick Co., addressed.

DEAR SIR: We own your favor of 17th instant with check for ...75.02 for premiums on insurance for account of the Ivy City Brick ... We return your check herewith with a corrected account. The

12 Underwriters' policies were ordered cancelled shortly after they were issued and were sent to you or the trust company by mistake. Please send check for enclosed corrected account and return us the policies of the Underwriters. Your prompt attention will oblige,

Yours truly, TYLER & RUTHERFORD.

2 enclosures.

Corrected.

MAY 20'' 5

IVY CITY BRICK CO.

No. policy.	Date.	Company.	Insured.	Am't.	Premium.
300048	Apr. 17, '95	Hanover Ins. Co. of N. Y.	Ivy City Brick Co., on buildings.	1,000	1,750
2408	" 18, "	Orient of Hartford...	Do. do.	1,000	1,750
2273	" " "	Pacific of N. Y.....	Do. do.	750	1,313
251636	" " "	Reading of Pa	Do. do.	750	1,313
300047	" 17, "	Hanover Ins. Co. of N. Y.	Ivy City Brick Co., on machinery.	1,000	1,750
2407	" 18, "	Orient of Hartford...	Do. do.	1,000	1,750
716975	" 19, "	American Central of St. Louis.	Do. do.	1,000	1,750
251635	" 18, "	Reading of Pa.	Do. do.	750	1,313
2272	" " "	Pacific of N. Y.	Do. do.	750	1,313
					$14,002

Above policies delivered by messenger to C. C. Duncanson May 14, '95.

John B. Larner, attorney and counsellor at law; offices, Adams building, 1335 F street.

WASHINGTON, D. C., *May* 20, '95.

Messrs. Tyler & Rutherford, Washington, D. C.

GENTLEMEN: The parties in interest in the matter of the Ivy City Brick Company's recent loss have called upon us, as trustees to whom the policies are payable, to take the necessary steps for the collection of the amount of the loss.

Kindly advise us what course you desire pursued in the matter in regard to the eleven policies which bear the stamp of your firm. There are five other policies upon the property, but we will communicate directly with the agent having charge of them, in regard to their collection.

We do not desire to take any unnecessary steps in this matter and would be obliged if you would furnish us with the information requested above. If proofs of loss are necessary, kindly send us the blanks.

Yours very truly, A. A. WILSON &
JOHN B. LARNER,
Trustees.

Dictated. L.

13 John B. Larner, attorney and counsellor at law; offices, Adams building, 1335 F street.

WASHINGTON, D. C., *May* 23, '95.

Tyler & Rutherford, Washington, D. C.

GENTLEMEN: Referring to the conversation I had with your Mr. Tyler yesterday over the telephone in regard to the recent loss of the I. C. Brick Co., I would state that Mr. Duncanson has positively notified me that he did not receive any notice of any kind from you advising him of the withdrawal of the two policies issued by the Underwriters' Association of New York and delivered by you May 14th until after the fire. He also advises me that the I. C. Brick Co. insists upon the trustees claiming their rights under these two policies.

Inquiry at the office of the Washington L. & T. Co. reveals the fact that no notice of the withdrawal of these policies was given that company or any of its officers until after the fire.

Neither Mr. Wilson nor myself as trustees received any such notice.

It therefore remains the duty of the trustees to insist upon a strict compliance with the terms of these policies.

Yours very truly, JOHN B. LARNER.

Dictated. L.

Tyler & Rutherford, real estate, loans, and insurance; office, 1307 F street northwest.

WASHINGTON, D. C., *May* 25, 1895.

John B. Larner, Esq., 1335 F street N. W., city.

DEAR SIR: We own your favor of 23rd instant, and note what you say with reference to insurance recently placed by us for account of the Ivy City Brick Co. There seems to be an erroneous impression respecting our position in this matter. We do not claim to have communicated the notice of cancellation of the Underwriters' policies to the assured prior to the fire. It had been our intention to hand these policies back to the agent who issued them, but by mistake of our office they were delivered to the trust company with other policies. As we were acting solely for the assured in the matter, we see no reason why it should be sought to gain advantage by refusing to return the policies which were delivered by mistake, and which were void at the time of said delivery. We can but regard the action of the assured in this matter as an exhibition of bad faith, and, understanding that the matter is now in your hands, we request that you return the Underwriters' policies to us, to be handed over to the agent of the company.

Yours truly, TYLER & RUTHERFORD.

14 MAY 29, 1895.

C. C. Duncanson, Esq., treas. Ivy City Brick Co., 9th & D Sts. N. W., city.

DEAR SIR: We have received no response to our letter of 20th instant enclosing a corrected account for the insurance obtained by us for account of the Ivy City Brick Company. The agents of the companies from whom we obtained this insurance are pressing us for the payment of the premium. We therefore request that you send us a check, as per corrected bill referred to, in order that we may make settlement with them. Your prompt attention to this matter will very much oblige,

Yours truly, TYLER & RUTHERFORD.

JUNE 12, 5.

Mr. C. C. Duncanson, for Ivy City Brick Co.

Apr. 17, '95	300048	Hanover of N. Y.	Buildings	1,000	1,750
" 18, "	2408	Orient " Conn	"	1,000	1,750
" " "	2273	Pacific " N. Y	"	750	1,313
" " "	251636	Reading " Pa	"	750	1,313
" 17, "	300047	Hanover " N. Y	Machinery	1,000	1,750
" 18, "	2407	Orient " Conn	"	1,000	1,750
" " "	2272	Pacific " N. Y	"	750	1,313
" " "	251635	Reading " Pa	"	750	1,313
" 19, "	716975	Am. Central of St. Louis	"	1,000	1,750
					14,002

O K, June 12th, 1895.

TYLER & RUTHERFORD.

Supreme Court of the District of Columbia.

FRIDAY, *December* 13, 1899.

The court resumes its session pursuant to adjournment, Mr. Justice Bradley presiding.

* * * * * * *

ALBERT A. WILSON and JOHN B. LARNER, Trustees, Plaintiffs,
vs.
THE HARTFORD FIRE INSURANCE COMPANY of the City of Hartford, Connecticut, a Corporation, Defendant. } At Law. No. 38932.

And now comes here, as well the plaintiffs, by their attorneys, Messrs. Blair & Thom, as the defendant, by its attorneys, Messrs. Wolf & Rosenberg, and submit this case to the court upon an agreed statement of facts, and the same having been *been* heard and fully understood, the court finds the issues joined in favor of the defendant. Therefore it is considered that the plaintiffs take nothing by their suit and the defendant go thereof without day and recover against said plaintiffs its costs of defense, to be taxed by the clerk, and have execution thereof.

15 *Order to Enter Appeal.*

Filed Dec. 19, 1899.

In the Supreme Court of the District of Columbia, the — Day of December, 1899.

ALBERT A. WILSON and JOHN B. LARNER, Trustees, *vs.* THE HARTFORD FIRE INSURANCE COMPANY. } At Law. No. 38932.

The clerk of said court will please enter an appeal to the Court of Appeals in the above-entitled cause and issue citation.

BLAIR & THOM,
Attorneys for Plaintiffs.

Memorandum.

December 21, 1899.—Appeal bond filed.

Supreme Court of the District of Columbia.

SATURDAY, *December* 30, 1899.

The court resumes its session pursuant to adjournment, Mr. Justice Bradley presiding.

* * * * * * *

ALBERT A. WILSON and JOHN B. LARNER, Trustees, Plaintiffs, *vs.* THE HARTFORD FIRE INSURANCE COMPANY of the City of Hartford, Connecticut, Def't. } At Law. No. 38932.

It is ordered that the term be, and hereby is, prolonged for the period of thirty days for the purpose of settling exceptions in the above cause.

In the Supreme Court of the District of Columbia.

ALBERT A. WILSON and JOHN B. LARNER, Trustees, *vs.* THE HARTFORD FIRE INSURANCE COMPANY. } At Law. No. 38932.

The President of the United States to the Hartford Fire Insurance Company, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the case therein under and as directed by the rules of said court, pursuant to an appeal filed in the supreme court of the District of Columbia on the 19th day of December, 1899, wherein Albert A. Wilson and John B. Larner, trustees, are appellants and you are appellee, to show cause, if any there be, why the judgment rendered against said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

16 Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 19th day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 21st day of December, 1899.

WOLF & ROSENBERG,
Attorneys for Appellee.

Order Settling Bill of Exceptions.

Filed Jan. 9, 1900.

In the Supreme Court of the District of Columbia.

ALBERT A. WILSON ET AL., Plaintiffs,
vs.
THE HARTFORD FIRE INSURANCE COMPANY, Defendant.
} At Law. No. 38932.

This cause came on to be heard on an agreed case, and, having been considered by the court, was adjudged in favor of the defendant; whereupon the plaintiffs, by their attorney, duly excepted to the ruling of said court, and in accordance with the terms of the agreed case filed herein the same is this ninth day of January, A. D. 1900, duly signed and sealed by the court as the proper bill of exceptions in said cause, *nunc pro tunc.*

A. C. BRADLEY, *Justice.* [SEAL.]

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 30, inclusive, contain a true and correct transcript of the record (as prescribed by rule 5 of the Court of Appeals of the District of Columbia) in cause No. 38932, at law, wherein Albert A. Wilson *et al.* are plaintiffs and The Hartford Insurance Company is defendant, as the same remain- upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 10th day of January, A. D. 1900.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 959. Albert A. Wilson *et al.*, trustees, appellants, *vs.* The Hartford Fire Insurance Co. Court of Appeals, District of Columbia. Filed Jan. 11, 1900. Robert Willett, clerk.

17 *Addition to Record per Stipulation of Counsel.*

Court of Appeals of the District of Columbia, January Term, 1900.

ALBERT A. WILSON and JOHN B. LARNER, Trustees, Appellants,
vs.
THE HARTFORD FIRE INSURANCE COMPANY. } No. 959.

Filed February 12, 1900.

Underwriters' Policy.

No. 20229. $1,000.

By this policy of insurance, the Hartford Fire Insurance Company, of the city of Hartford, in the State of Connecticut, in consideration of the stipulations herein named and of seventeen and $\frac{50}{100}$ dollars premium does insure Ivy City Brick Company for the term of one year from the 17th day of April, 1895, at noon, to the 17th day of April, 1896, at noon, against all direct loss or damage by fire, except as hereinafter provided, to an amount not exceeding*ly* one thousand dollars to the following-described property while located and contained as described herein, and not elsewhere, to wit: Ivy City Brick Company. $1,000. On machinery of every description, dryers, cars, apparatus, equipments and tools, contained in their one-story brick and frame structure with metal roof (about 118 x 165 feet) and one-story frame and brick addition with metal roof. Situate on their tract known as "Ivy City" about one mile northeast of Washington, D. C. Other concurrent insurance permitted without notice until required. Loss, if any, payable as interest may appear to Albert A. Wilson and John B. Larner, trustees. (Mortgagees' clause with full contribution attached.) Attached to and made a part of policy No. 20229 of the N. Y. Underwriters' agency.

THOS. F. BARRETT, *Agents.*

18 This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate shall be made by the insured and this company, or, if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy shall be payable sixty days after due notice, ascertainment, estimate, and satisfactory proof of the loss have been received by this company in accordance with the terms of this policy. It shall be optional, however, with this company to take all, or any part, of the articles at such ascertained or appraised value,

and also to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of its intention so to do; but there can be no abandonment to this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or if the subject of insurance be a manufacturing establishment and it be operated in whole or in part at night later than 10 o'clock, or if it cease to be operated for more than ten consecutive days; or if the hazard be increased by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering or repairing the within-described premises for more than fifteen days at any one time; or if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building on ground not owned by the insured in fee-simple; or if the subject of insurance be personal property and be or become incumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed; or if any change, other than by the death of an insured, take place in the interest, title, or possession of the subject of insurance (except change of occupants without increase of hazard), whether by legal process or judgment or by voluntary act of the insured, or otherwise; or if this policy be assigned before a loss; or if illuminating gas or vapor be generated in the described building (or adja-
19 cent thereto) for use therein; or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used, or allowed on the above-described premises, benzine, benzole, dynamite, ether, fireworks, gasoline, Greek fire, gunpowder exceeding twenty-five pounds in quantity, naptha, nitro-glycerine or other explosives, phosphorus, or petroleum or any of its products of greater inflammability than kerosene oil of the United States standard (which last may be used for lights and kept for sale according to law, but in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days.

This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or

military or usurped power, or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises; or (unless fire ensues, and, in that event, for the damage by fire only) by explosion of any kind, or lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

If a building or any part thereof fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

This company shall not be liable for loss to accounts, bills, currency, deeds, evidences of debt, money, notes, or securities; nor, unless liability is specifically assumed hereon, for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, tools or property held on storage or for repairs; nor, beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings, or by interruption of business, manufacturing processes, or otherwise; nor for any greater proportion of the value of plate glass, frescoes, and decorations than that which this policy shall bear to the whole insurance on the building described.

If an application, survey, plan, or description of property be referred to in this policy it shall be a part of this contract and a warranty by the insured.

In any matter relating to this insurance no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy may by a renewal be continued under the original stipulation, in consideration of premium for the renewed term, provided that any increase of hazard must be made known to this company at the time of renewal or this policy shall be void.

This policy shall be canceled at any time at the request of the insured; or by the company by giving five days' notice of such cancellation. If this policy shall be canceled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is canceled by this company by giving notice it shall retain only the *pro rata* premium.

If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached, or appended hereto.

If property covered by this policy is so endangered by fire as to require removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of

property remaining in the original location shall, for the ensuing five days only, cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one such new location bears to the value in all such new locations; but this company shall not, in any case of removal, whether to one or more locations, be liable beyond the proportion that the amount hereby insured shall bear to the total insurance on the whole property at the time of fire, whether the same cover in new location or not.

If fire occur the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and, within sixty days after the fire, unless such time is extended in writing, by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all incumbrances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy; by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged; and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise, nor related to the insured) living nearest the place of fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary public shall certify.

21 The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and

ling to agree, shall submit their differences to the umpire; and
e award in writing of any two shall determine the amount of such
ss; the parties thereto shall pay the appraiser respectively selected
them and shall bear equally the expenses of the appraisal and
mpire.

This company shall not be held to have waived any provision or
ndition of this policy or any forfeiture thereof by any require-
ent, act, proceeding on its part relating to the appraisal or to any
amination herein provided for; and the loss shall not become
yable until sixty days after the notice, ascertainment, estimate,
d satisfactory proof of the loss herein required have been received
this company, including an award by appraisers when appraisal
s been required.

This company shall not be liable under this policy for a greater
oportion of any loss on the described property, or for loss by and
pense of removal from premises endangered by fire, than the
mount hereby insured shall bear to the whole insurance, whether
lid or not, or by solvent or insolvent insurers, covering such prop-
ty, and the extent of the application of the insurance under this
olicy or of the contribution to be made by this company in case of
ss, may be provided for by agreement or condition written hereon
attached or appended hereto. Liability for reinsurance shall be
specifically agreed hereon.

If this company shall claim that the fire was caused by the act or
glect of any person or corporation, private or municipal, this
mpany shall, on payment of the loss, be subrogated to the extent
such payment to all right of recovery by the insured for the loss
sulting therefrom, and such right shall be assigned to this com-
ny by the insured on receiving such payment.

No suit or action on this policy, for the recovery of any claim,
all be sustainable in any court of law or equity until after full
mpliance by the insured with all the foregoing requirements, nor
nless commenced within twelve months next after the fire.

Wherever in this policy the word "insured" occurs, it shall be
eld to include the legal representative of the insured, and wherever
e word "loss" occurs, it shall be deemed the equivalent of "loss
or damage."

2 If this policy be made by a mutual or other company having
special regulations lawfully applicable to its organization,
embership, policies, or contracts of insurance, such regulations
all apply to and form a part of this policy as the same may be
ritten or printed upon, attached, or appended hereto.

This policy is made and accepted subject to the foregoing stipula-
ons and conditions, together with such other provisions, agree-
ents, or conditions as may be indorsed hereon or added hereto
nd no officer, agent, or other representative of this company shall
ave the power to waive any provision or condition of this policy
xcept such as by the terms of this policy may be subject of agree-
ent indorsed hereon or added hereto, and as to such provisions
nd conditions no officer, agent, or representative shall have such
ower or be deemed or held to have waived such provisions or con-

ditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured unless so written or attached.

In witness whereof, this company has executed and attested these presents this seventeenth day of April, 1895.

This policy shall not be valid until countersigned by the duly
3500
authorized agent of the company at Washington, D. C.

GEO. L. CHASE, *President.*
P. C. ROYCE, *Secretary.*
THOS. TURNBULL,
Ass't Secretary.
CHAS. E. CHASE,
2d Ass't Secretary.

Countersigned by—
THOS. F. BARRETT, *Agent.*

Court of Appeals, District of Columbia.

ALBERT A. WILSON and JOHN B. LARNER, Trustees, Appellants, *vs.* THE HARTFORD FIRE INSURANCE COMPANY, Appellee. } No. 959.

It is hereby stipulated and agreed that the aforegoing is a copy of one of the policies sued on in the above-entitled cause, referred to in the agreed case, in paragraph 12 thereof, filed as a part of said agreed case, and also referred to in the correspondence filed with said agreed case. It is further stipulated and agreed that the other policy is similar except as to the property covered by the loss, that said policy was omitted from the record through inadvertence,
23 and that this copy may be filed and printed as a part of the record herein.

BLAIR & THOM,
Attorneys for Appellants.
WOLF AND ROSENBERG,
Attorneys for Appellee.

(Endorsed:) No. 959. Albert A. Wilson *et al.*, appellants, *vs.* Hartford Fire Insurance Company. Addition to record per stipulation of counsel. Court of Appeals, District of Columbia. Filed Feb. 12, 1900. Robert Willett, clerk.

24 THURSDAY, *May 10th, A. D.* 1900.

ALBERT A. WILSON and JOHN B. LARNER, Trustees, Appellants, *vs.* THE HARTFORD FIRE INSURANCE COMPANY. } No. 959.

The argument in the above-entitled cause was commenced by Mr. Henry P. Blair, attorney for the appellants, and was continued by

r. Samuel B. Paul, attorney for the appellee, and was concluded
Mr. Henry P. Blair, attorney for the appellants.

ALBERT A. WILSON and JOHN B. LARNER, Trustees, Appellants,
vs.
THE HARTFORD FIRE INSURANCE COMPANY.
No. 959.

Opinion.

Mr. Justice SHEPARD delivered the opinion of the court:

1. This suit was brought by Albert A. Wilson and John B. Lar-r, trustees, upon two policies of insurance covering $1,000 on cer-in buildings and $1,000 on machinery of the Ivy City Brick ompany for one year from April 17, 1895. Both policies were made ayable to said trustees as their interest may appear.

The policies are simple contracts of the standard form, two of the ipulations of which, only, are of any importance in the determina-on of the case. These are: (1) "This policy shall be canceled at ny time at the request of the insured; or by the company by giv-g five days' notice of such cancel-ation. (2) This policy is made d accepted subject to the foregoing stipulations and conditions, gether with such other provisions, agreements or conditions as ay be indorsed hereon or added hereto, and no officer, agent, or her representative of this company shall have the power to waive y provision or condition of this policy except such as by the terms this policy may be subject of agreement indorsed hereon or added reto, and as to such provisions and conditions no officer, agent, or presentative shall have such power or be deemed or held to have aived such provisions or conditions unless such waiver, if any, all be written upon or attached hereto, nor shall any privilege or rmission affecting the insurance under this policy exist or be aimed by the insured unless so written or attached."

An agreed statement was made of the facts that each party could rove, and with a reservation of the right of exception to all rulings the court made thereon, the case was thereon submitted, and judg-ent was entered for the defendant.

2. From the agreed statement it appears:

(1.) That Tyler and Rutherford, insurance brokers, were requested y the Ivy City Brick Company to obtain insurance upon its prop-rty for the sum of $10,000; and that they applied to Barrett, the cal agent of defendant at Washington, for policies covering $2,000 f the risk.

"(2.) Said Barrett stated to said Tyler & Rutherford that the pro-osed risk was a special hazard, and that he doubted his authority accept it before reference to his principal, but that he would issue olicies amounting to $2,000, equally divided on the buildings and achinery, upon the condition that the same should be held by the id Tyler & Rutherford, and not delivered to their principals until e decision of the Hartford Fire Insurance Company on the accept-nce of the risk was duly had, and should be subject to immediate

cancel-ation (the 5 days' notice in the policy conditions being waived) by notice that said company rejected the risk.

(3.) This condition was accepted by said Tyler & Rutherford, and the two policies of insurance in the declaration set forth were thereupon written and placed in their hands."

(4.) On April 27, 1895—ten days after the delivery of the policies aforesaid—defendant's special agent came to Washington, and informed Tyler & Rutherford that defendant "refused to carry the risk, and ordered the cancel-ation of said policies." On the same day Barrett met Tyler—who had negotiated the insurance and had the policies—and notified him that the defendant ordered their cancel-ation. Tyler responded: "All right; send up and get them."

(5.) Barrett sent three times to Tyler & Rutherford for the policies, but did not obtain them, because, as his messenger was informed, Tyler, who had charge of the policies, was absent and would have to be seen.

(6.) Barrett became ill and did not appear at his office for some days; but he had immediately ordered his entry clerk to note on the register of these policies: "Canceled by order of company." And this was done, but the date does not appear.

(7.) On May 1, according to custom, accounts between Barrett and Tyler & Rutherford were settled, but no charge for premiums was presented or made; the policies being treated as dead.

(8.) The existence of the policies was not made known to the insured or any one interested therefor, until May 16, 1895, when it became possessed of them. Nor had the insured any knowledge of the transactions between Barrett and Tyler & Rutherford.

(9.) The policies, until May 16, 1895, remained in the office of Tyler & Rutherford along with some other policies that had been obtained under the original order.

26 (10.) On May 16, 1895, a clerk of Tyler & Rutherford was ordered by them to make up the account for premiums due on the policies obtained for the brick company and put them in a package for delivery. The package, including the policies sued on, was handed, with the account, to Tyler by the representative of the brick company; but Tyler did not examine the package and did not know that the policies were inclosed.

(11.) The account included the premium charges for the two policies. The brick company's representative received the package and engaged to pay the account on May 27, 1895.

(12.) On May 17, 1895, the property was destroyed by fire. On the same day, and after the fire, Tyler, averring that he did not know the property had been destroyed, demanded the return of the two policies of the party to whom he had delivered them, stating that they had been canceled and that he had delivered them by mistake. Later, on the same day, Tyler & Rutherford gave the same notice and made the same demand of the representative of the beneficiaries of the trust.

(13.) The brick company directed the holding of the policies; and sent a check to Tyler & Rutherford for the amount of the account rendered, including the premiums on these two policies.

ey refused to receive the money for the premiums on these pol-
s, declaring that they were void and had been delivered by mis-
e, and made up and transmitted a new account for premiums
e, omitting these.

3. No question has been raised as regards the fact that no pay-
nts of the premiums of the policies had been received by the de-
dant; it being conceded that the customary credit and settling
angements between the respective parties and their agents and
okers were equivalent to payments, under the conditions of the
licies, in so far as they may depend thereupon for their validity.

1. The first question raised on the argument relates to the scope
the agency of Tyler & Rutherford for the insured.

That they were agents authorized, by virtue of their employment,
represent the insured in all matters relating to the negotiation of
contracts, and to bind it by their representations and state-
nts until, at least, the agency might be terminated by the final
livery of the executed policies, cannot be denied. The particular
tent and legal effect of this agency became material, only, in con-
dering the branch of the defense founded on that part of the agreed
tement respecting the cancel-ation of the policies—treating can-
l-ation, as therein used, as the act of terminating or rescinding con-
cts actually in force until canceled.

From the terms of the agreed statement, it appears that the local
ent of the insurer, who was possessed of signed policies and au-
orized to fill the blanks, deliver them, and bind his principal
ereby, regarded the policies as in force, at least, until disapproved
the company, and therefore subject to the reserved power of can-
l-ation, notwithstanding the conditional delivery, hereafter to be
nsidered separately.

As regards the oral waiver of the five days' notice of cancel-ation,
acted of the brokers at the time of their delivery, it is not neces-
ry to consider the effect of the express condition, in each policy,
at additional stipulations, or waivers of those contained, in order
bind, shall be indorsed thereon, because the notice of cancel-ation,
effective as such, was in fact given more than five days before the
s occurred. The notice of cancel-ation was given to the brokers,
d demand made of them for the return of the policies. None was
ven to the insured, and it had no knowledge of the fact from any
urce whatever.

There is nothing in the agreed statement to warrant the conclu-
on that the brokers' agency or employment extended any farther
an the procurement of the policies. When executed and deliv-
ed—assuming for present purposes that the delivery was uncondi-
onal and complete—their agency and employment ended. Notice
them of cancel-ation was not the notice stipulated for in the pol-
ies, and was, therefore, ineffectual. Grace *v.* American Central Ins.
., 109 U. S., 278, 282.

In that case, it is true that the policy had passed into the actual
ossession of the insured before the notice of cancel-ation was given
the broker, who accepted the notice and promised the surrender
the policy; but we cannot agree that this fact authorizes any lim-

itation of the broad rule of the decision. It would be inconsistent with the general principles of the law of agency, applied in that decision, to hold, that because a policy is suffered to remain in the hands of the agent for its procurement, he thereby becomes the general agent of the insured—for that would be the necessary effect—with power to alter, to rescind and to accept notice of cancel-ation and bind the insured without his knowledge or consent. To give such effect to the mere possession of the policy, after execution and delivery, would be, not only to revive a limited agency, for no reasonable purpose, but also to extend it and invest it with powers that had not previously been given. Moreover, it would be fraught with great danger to the vast interests dependent upon insurance, without any general, compensating benefit to any other interest.

Merely permitting the policies to remain, for a time and uncalled for, in the hands of the brokers, which is all that this record discloses, is perfectly consistent with the idea of the termination of their agency.

With the receipt of the policy a new relation is created between the insured and the broker, namely, that of depositor and depositary: the possession of the broker, becomes, in law, the possession of the insured and nothing more; his sole duty and authority, in the new relation, is to deliver the policy upon demand of the insured, or within a reasonable time without demand.

5. This brings us to the last ground of defense, the one chiefly relied on by the appellant, and upon which the decision was made to turn in the court below. The proposition—probably stated more broadly than is justified by the recitals of the agreed statement—is that the policies were not intended to take effect, or become binding as completed contracts, because of the express condition of their delivery to the brokers.

27 Now, it is quite clear that the brokers cannot be regarded, in any conceivable legal sense, as the agents of the insurer in this matter of delivery, and, it is fair to add, there has been no such contention. On the other hand, upon principles hereinabove stated, the brokers are to be considered as the agents of the insured for all purposes connected with the negotiation and final delivery of the executed policies; and the question will, therefore, be considered as if the conditional delivery had been made directly to the insured without their intervention.

The research of counsel has not produced a reported case in which the question of a conditional delivery of a policy of insurance, as here presented, has been determined. The case of Insurance Co. *v.* Webster, 6 Wall., 129, cited on behalf of the appellant, cannot be regarded as controlling. There, the policy was accepted from an agent in Michigan, upon a condition in writing, executed by the insured, that it should not take effect until approved by the general agent at Buffalo, New York. The premium had been paid at the time of delivery. The general agent disapproved the risk and ordered the issuing agent to return the premium and *cancel* the policy. This he failed to do, whilst engaged in an attempt to have the policy finally approved. Whilst this was going on the loss occurred. The

premium was then tendered to the insured, with notice that his application had been rejected. The court said that, from all the facts and circumstances in evidence, in connection with the authority and conduct of the two agents, it was apparent that, notwithstanding the strict letter of the executed condition of receipt, the policy was not intended to be a nullity pending the matter of its approval. Hence, as there was no notice to the insured and no tender of return of premium until after the loss, the policy was declared enforceable. In the case at bar, the premium, if charged at all to the brokers, was charged off, the risk was rejected within an apparently reasonable time, and notice was given to them while they held the policy under the condition, if that condition be available at all.

Nor are the decisions cited on behalf of the appellee any more controlling. These are: Quebec Bank, etc., *v.* Hellman, 110 U. S., 178; Belleville Bank *v.* Borneman, 124 Ill., 205; Merchants' Ex. Bank *v.* Luckow, 37 Minn., 542; Benton *v.* Martin, 52 N. Y., 570; Reynolds *v.* Robinson, 110 N. Y., 654; Brown *v.* American Central Ins. Co., 70 Iowa, 390; Harnickell *v.* N. Y. Life Ins. Co., 111 N. Y., 390.

The first five of the foregoing cases need not be reviewed, for the doctrine enounced in each, so far as they bear upon the question to be decided, is to be found in a recent decision of the Supreme Court of the United States, the opinion in which reviews some of them. Burke *v.* Dulaney, 153 U. S., 228. In that case suit was brought by the payee of a negotiable promissory note, in the usual form, against the maker. Evidence was held admissible to show that the note was delivered upon a distinct verbal agreement that it should not become operative as a note until the maker could examine the property for which it was given, and determine whether he would conclude the purchase. There was no other writing relating to the contract of purchase. The evidence did not tend, it was said, to contradict or vary a written contract, but to show that it never went into effect, never in fact became the contract of the parties, because the condition upon which it was to become operative had not transpired.

In Brown *v.* American Ins. Co., *supra*, the policy was not delivered to the insured, but was deposited with a third person to hold until notified of acceptance by the company. His possession was in law that of the company. Had that course been pursued in this case, there would be little difficulty.

In Harnickell *v.* N. Y. Life Ins. Co., *supra*, the facts are peculiar. The defendant's agent entered into negotiations with Harnickell, who was then heavily insured in other companies. He agreed to take two large policies in the New York Life, provided the agent would give certain credits upon the first premium, and procure a settlement or surrender of his existing policies, upon terms satisfactory to Harnickell. Pending the negotiations for this surrender, the agent brought the new policies to Harnickell with the notes for him to execute. The agent had no power to amend or add any condition to the policies.

Harnickell agreed to deliver his notes and to receive the policies,

upon the express condition that the agent was to complete the performance of the agreement respecting the policies in the other companies.

The terms of this condition were fully expressed in writing signed by both Harnickell and the agent; but the fact was not communicated by the agent to the company. The agent failed to complete the arrangement of the old policies and declined to do so. Harnickell then returned the policies and demanded the return of his notes.

This being refused, he brought his action to compel the surrender of his notes, and was awarded the relief prayed for. The court said the question was not in respect of the agent's power to modify the contract contained in the policies, but of Harnickell's right to refuse to receive them as completed contracts, save upon the condition imposed. He could not be compelled to accept, and had the right, uncontrolled by any limitations upon the agent's power, to receive the policies subject to the condition. That condition was evidenced by writing signed by both parties. Believing that the agent was acting in good faith, and with the knowledge of his principal, it would seem that Harnickell could scarcely have done more to protect himself from possible imposition.

The facts of that case and the character of the action distinguish it from the case at bar.

In Burke *v.* Dulaney, *supra*, the transaction of purchase and sale was evidenced by no writing other than the simple note given in payment of the agreed consideration; and the decision was, that, in such case it might be shown by parol evidence that the note was delivered upon a condition precedent. In Reynolds *v.* Robinson, 110 N. Y., 654, one of the cases cited above, it was held, in following the general doctrine of an earlier case, that the delivery of a contract for the sale of lumber might be shown to have been made upon condition. But the court said: "The rule should be
28 cautiously applied to avoid mistake or imposition, and confined strictly to cases within its reason."

The contracts and instruments involved in those cases are very different from the policies of insurance sued upon. These are elaborate instruments and bound in stipulations and conditions. Among these, note the following, that is embraced in the general clause recited in the preliminary statement: "*This policy is made and accepted subject to the foregoing stipulations and conditions, together with such other provisions, agreements or conditions as may be endorsed hereon or added hereto.*"

This and other clauses limiting the powers of agents and requiring all additional terms and conditions to be indorsed in writing upon the policies, were devised by the insurance company, itself, to prevent questions concerning the conditions upon which its policies shall be "made and accepted" from being left to the vagueness and uncertainty of oral proof.

The general clause limiting the powers of agents to make new conditions, waivers, etc., was said, by the court of appeals of Maryland, in a case which does not decide the question here presented, to

refer "to those conditions and provisions of the policy which enter into and form a part of the contract of insurance and are essential to make it a binding contract between the parties; and which are properly designated as conditions." Franklin Fire Insurance Co. *v.* Chicago Ice Co., 36 Md., 102, 120.

It has also been held that, where the policy contained an acknowledgment, without qualification, or additional condition changing its effect, of the receipt of the premium, it was not competent to show by oral proof that the premium had not been paid, and that the policy, for that reason, had not taken effect. Basch *v.* Humboldt, etc., Insurance Co., 35 N. J. L., 429, 431; Consolidated Ice Co. *v.* Cashow, 41 Md., 59, 76.

The condition in this case was one in addition to those contained in the policies and upon which they were "made and accepted," and was not in writing indorsed upon them or executed simultaneously therewith.

Our conclusion is, that by reason of the nature and terms of the policies, it is not competent to show their delivery to the insured upon a verbal condition, making their existence as contracts depend upon the subsequent ratification of another agent.

In the absence of direct and controlling authority, we think this conclusion embodies the safer rule in such cases. It prevents the uncertainty and the opportunities for controversy and imposition that would naturally follow from making the binding effect of a completely executed and delivered policy depend upon verbal conditions of delivery. And any inconveniences or hardships that might follow the adoption of this view—beyond its enforcement in the particular case—can be readily and certainly avoided, either by the agent's indorsement of the condition on the policy, or else refusing to issue it at all before obtaining the consent of his principal.

It follows that the judgment must be reversed with costs, and the cause remanded with direction to enter judgment for the plaintiffs upon the stipulation of the agreed case. It is so ordered.

Reversed.

Mr. Chief Justice Alvey dissents.

29 TUESDAY, *June 12th, A. D.* 1900.

ALBERT A. WILSON and JOHN B. LARNER, Trustees, Appellants, *vs.* THE HARTFORD FIRE INSURANCE COMPANY.	No. 959. April Term, 1900.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the supreme court of the District of Columbia, and was argued by counsel; on consideration whereof it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause be, and the same is hereby, reversed with costs, and that this cause be, and the same is hereby, remanded to the said

supreme court, with direction to enter judgment for the plaintiffs upon the stipulation of the agreed case.

Per Mr. Justice SHEPARD.

June 12, 1900.

Dissenting, Mr. Chief Justice Alvey.

30 Court of Appeals of the District of Columbia, October Term, 1900.

ALBERT A. WILSON and JOHN B. LARNER, Trustees, Appellants,
vs.
THE HARTFORD FIRE INSURANCE COMPANY. } No. 959.

On consideration of appellee's motion for a rehearing in the above-entitled cause, it is by the court now here ordered that said motion be, and the same is hereby, granted.

Per Mr. Justice MORRIS.

October 19, 1900.

31 WEDNESDAY, *February 6th, A. D.* 1901.

ALBERT A. WILSON and JOHN B. LARNER, Trustees, Appellants,
vs.
THE HARTFORD FIRE INSURANCE COMPANY. } No. 959.

The above-entitled cause was reargued by Mr. Henry P. Blair, attorney for the appellants, and by Messrs. S. B. Paul and Alexander Wolf, attorneys for the appellee.

32 ALBERT A. WILSON ET AL., Trustees, Appellants,
vs.
THE HARTFORD FIRE INSURANCE COMPANY. } No. 959.

(Mr. Justice SHEPARD delivered the opinion of the court:)

This case has been reargued on motion granted because of the novelty and importance of the question upon which the decision had been made to turn and in the hope that some additional authority might be found that would aid in its solution. None such has been called to our attention or developed by our own research. The propositions of the argument, which have been carefully considered, are substantially the same, though elaborated, as those upon which the cause was originally submitted. Whilst confessing that the question is one of difficulty, we see no reason to change the conclusion formerly reached and think it unnecessary to add anything to the opinion then delivered. Readopting that opinion as expressing the views of the majority of the court, the order then made reversing the judgment and remanding the cause for entry of judgment on behalf of the plaintiffs will not be disturbed.

Mr. Chief Justice Alvey dissents.

33 ALBERT A. WILSON and JOHN B. LARNER, Trustees, Appellants,
vs.
THE HARTFORD FIRE INSURANCE COMPANY. } No. 959.

(*Dissenting Opinion by Mr. Chief Justice Alvey.*)

I am constrained to dissent from the majority opinion filed in this case. I cannot for a moment appreciate the reasoning upon which the judgment of the court below is reversed. I do not see that the plaintiffs, under the agreed state of facts, have the shadow of a ground for recovery on the policies of insurance upon which they have sued. A valid policy of insurance, like all other contracts, must be the result of concurring minds of the parties thereto. There must be an *aggregatio mentium*, or otherwise it is not binding.

The agreed statement of facts in this case would seem to put the question beyond all doubt that the policies were never in fact delivered to the plaintiffs or their agents as completed contracts. It is agreed that Barrett, the agent of the defendant, stated to Tyler & Rutherford, the brokers acting for the plaintiffs, that the proposed risk was a special hazard, and that he doubted his authority to accept it before reference to his principal, but that he would issue policies amounting to $2,000, equally divided on the buildings and machinery, upon the condition that the same should be held by Tyler & Rutherford *and not delivered to their principals* until the decision of the defendant company on the acceptance of the risk was duly had, and should be subject to immediate cancellation by notice that said company rejected the risk. It is also agreed that on the 27th of April, 1895, Royce, the special agent of the defendant, known by Tyler & Rutherford to be the representative of the defendant company, having authority to inspect, confirm, or cancel risks for and in behalf of the company, went to the office of Tyler & Rutherford and informed them that the defendant company refused to carry the risk and ordered the cancellation of said policies, and on the same day the said Barrett, being on his way to the office of Tyler & Rutherford, met R. K. Tyler, a member of that firm, who had made the negotiation for the policies, had the same in his custody, and had exclusive charge of the matter, and announced to him that the company ordered their cancellation; to which
34 the said Tyler responded, "All right; send up and get them."

This was all before the fire occurred. That the policies were ineffectual, because they were incomplete contracts, was well understood and fully recognized by all the agents of both parties who participated in the transaction.

Under such circumstances, I do not see upon what principle the insurance company can be held responsible on the policies. There is no question of estoppel involved, for the plaintiffs never knew of the existence of the policies, and therefore were never under the supposition that they were protected by them until some time after the fire occurred, on the 17th of May, 1895. The policies came to the possession of an agent of the plaintiffs by what is admitted to be

a clear mistake on the part of an accounting clerk of Tyler an
Rutherford, the insurance brokers, and with no intention on th
part of Tyler and Rutherford to deliver over the policies to th
plaintiffs or their agents.

The law upon this subject is very clear, and may be found i
most of the books that treat of the contract of insurance. In May o
Insurance, sect. 56, the result of numerous cases cited by the autho
is stated to be that if there has been no payment of the premium (a
is the case in the present instance) and no delivery in fact of th
policy, the contract is, *prima facie*, incomplete, and he who claim
under it must show that *it was the intention of the parties* that
should be operative, notwithstanding these facts. The presumptio
of law is that the delivery of the policy and the payment of the pr
mium are dependent upon each other, but this presumption may b
rebutted by showing a waiver of the payment or such other facts a
go to show the *intention and understanding of both parties* that th
policy shall be valid as if delivered, notwithstanding the non-pay
ment of the premium, and an actual delivery obtained by misrepr
sentation is no delivery to give effect to the contract. The mer
manual possession of the policy is of little consequence, whether i
be in the hands of the insurers or the insured. Its possession by th
insured makes a *prima facie* case for him, subject to be met by proo
that it was *never delivered by the consent of the insurers*, whil
its possession by the insurers makes a *prima facie* case fo
them, subject to be met by proof that, though not transferre
it was intended by the parties to be a valid contract without furth
action by either, and so in legal contemplation there was a delivery
This principle is exemplified by a number of cases cited by th
author.

The question whether a contract has been delivered or accepted
not is always one of a preliminary character that arises in advanc
of questions as to the construction of the contract itself, and mo
generally it is one that depends upon parol evidence for its dete
mination. Therefore, whether an instrument sued upon, being eith
deed or simple contract, policy of insurance, or other written instr
ment, came into the hands of the plaintiff without *any absolute an
final delivery* by the party sought to be charged thereby, is a questio
upon which parol evidence is always admissible. 1 Greenl. Ev., se
284; Leppoc *vs.* National Bank of Md., 32 Md., 136, 144; Clark *v*
Gifford, 10 Wend., 320; U. S. *vs.* Leffler, 11 Pat., 86; Couch *v*
Meeker, 2 Conn., 302; McFarland *vs.* Sikes, 54 Conn., 250; Burk
vs. Dulaney, 153 U. S., 228. And where an instrument is signe
with an understanding that it is not to be delivered except upon th
performance of a certain condition or upon the happening of a ce
tain event or contingency, this may be shown by parol, in avoi
ance of the effect of the instrument. Black *vs.* Lamb, 1 Beasley
108; Burke *vs.* Dulaney, *supra*, and cases cited.

The contention that because the policy contains the provision tha
"this policy is made and accepted subject to the foregoing stipula
tions and conditions, together with such other provisions, agreement
or conditions as may be endorsed hereon or added thereto, and n

officer, agent, or other representative of the company shall have the power to waive any provision or condition of this policy except such," &c., therefore parol evidence is not admissible to show the circumstances under which the policies were written and placed in the hands of the insurance brokers, to be retained by them until further notice as to whether the risk was accepted, because, as contended, such evidence would vary or alter the terms and
36 conditions of the policy, cannot for a moment be supported. Such contention simply begs the whole question. It assumes that the risk had been accepted by the defendant company, and that the policies had been delivered to the plaintiffs or their agents as completed contracts. That is the very question in dispute. Until the policies were in fact issued and delivered as executed contracts the terms and conditions contained in them could have no operative effect whatever. This would seem to be well settled beyond question. Benton *vs.* Martin, 52 N. Y., 570, 574; Harnickell *vs.* N. Y. Life Ins. Co., 111 N. Y., 390; Brown *vs.* Am. Cent. Ins. Co., 70 Iowa, 390.

Without adding anything more, I am, for the reasons briefly stated, decidedly of opinion that the policies sued on never attached to the property, and that the court below was right in entering judgment for the defendant on the statement of agreed facts, and that that judgment ought to be affirmed.

37 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 36, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Albert A. Wilson and John B. Larner, trustees, appellants, *vs.* The Hartford Fire Insurance Company, No. 959, January term, 1901, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 20th day of March, A. D. 1901.

ROBERT WILLETT,

Clerk of the Court of Appeals of the District of Columbia

38 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which Albert A. Wilson and John B. Larner, trustees, are appellants and The Hartford Fire Insurance Company is appellee, which suit was removed into the said Court of Appeals by virtue of an appeal

from the supreme court of the District of Columbia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Court of Appeals and removed into the Supreme Court of the United States,

39 do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 19th day of April, in the year of our Lord one thousand nine hundred and one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

40 [Endorsed:] File No., 18,110. Supreme Court of the United States. No. 625. October term, 1900. The Hartford Fire Insurance Co. *vs.* Albert A. Wilson and John B. Larner, trustees. Writ of certiorari. Court of Appeals, District of Columbia. Filed Apr. 20, 1901. Robert Willett, clerk.

41 In the Court of Appeals of the District of Columbia.

THE HARTFORD FIRE INSURANCE COMPANY, Petitioner, }
vs. } No. 959.
ALBERT A. WILSON and JOHN B. LARNER, Respondents. }

It is stipulated and agreed between the undersigned attorneys for the respective parties to the above-entitled cause that the certified copy of the transcript of record herein filed in the Supreme Court of the United States in the case of The Hartford Fire Insurance Company *vs.* Albert A. Wilson and John B. Larner, trustees, number 625, October term, 1900, may be taken and considered as the return of this court to the writ of certiorari issued by the Supreme Court of the United States, dated April 19, 1901, in the case above referred to.

SAMUEL B. PAUL,
ALEXANDER WOLF,
Attorneys for the Hartford Fire Insurance Company.
HENRY P. BLAIR,
Attorney for Albert A. Wilson and John B. Larner, Trustees.

42 Court of Appeals of the District of Columbia.

Return to Writ of Certiorari.

In obedience to the command of the foregoing writ of certiorari and in pursuance of the stipulation of the parties, a full and true copy of which is hereto attached, I do hereby certify and return that the transcript of the record filed with the application to the Supreme Court of the United States for a writ of certiorari in the case of Albert A. Wilson and John B. Larner, trustees, appellants, *vs.* The

Hartford Fire Insurance Company is a full, true, and complete transcript of the record upon which said cause was heard in the Court of Appeals of the District of Columbia, together with all proceedings in said court.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 22d day of April, A. D. 1901.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

43 [Endorsed:] File No., 18,110. Supreme Court U. S., October term, 190–. Term No., 625. The Hartford Fire Insurance Co., petitioner, *vs.* Albert A. Wilson *et al.* Writ of certiorari and return. Filed April 23, 1901.